



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 10, 2015

Mr. Matthew L. Grove
Assistant County Attorney
Fort Bend County Attorney
401 Jackson Street, 3rd Floor
Richmond, Texas 77469

OR2015-25933

Dear Mr. Grove:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 590345.

The Fort Bend County Sheriff's Office (the "sheriff's office") received a request for information pertaining to a specified address, including several specified cases. You state the sheriff's office has released some of the requested information and has no information responsive to a portion of the request.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Juvenile Justice Department, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

- (2) any information that is excepted from required disclosure under [the Act], or other law[.]

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find some of the submitted information was used or developed in investigations of alleged or suspected child abuse or neglect conducted by the sheriff's office. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the sheriff's office has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the sheriff's office must withhold the information we have marked

under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, we note the requestor is a parent of the child victims listed in report number 13-35034, and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information related to report number 13-35034 may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). We further note the requestor is a parent of the child victim listed in report number 15-28878. However, as we are unable to determine if the requestor is accused of committing the suspected abuse in report number 15-28878, we must rule conditionally. If the requestor is alleged to have committed the abuse, then the sheriff's office must withhold the information related to report number 15-28878 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not alleged to have committed the abuse, then the sheriff's office may not use section 261.201(a) to withhold this information from the requestor. *Id.* However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). Accordingly, we will consider your remaining argument under section 552.101 of the Government Code and your arguments under sections 552.108 and 552.130 of the Government Code for the information related to report numbers 13-35034 and 15-28878.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). You state the information related to case number 15-27855 relates to a pending criminal investigation. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we agree section 552.108(a)(1) is applicable to this information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Gov’t Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred

³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

adjudication. *See id.* §§ 552.108(a)(2), .301(e)(1)(A). You assert the information related to case numbers 13-35034 and 15-28878 pertains to cases that concluded in results other than convictions or deferred adjudications. Therefore, we agree section 552.108(a)(2) is applicable to this information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information includes, among other items, a detailed description of the offense. *See* ORD 127 at 3-4. However, the basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See id.* Thus, with the exception of basic information, the sheriff's office may withhold the information related to report number 15-27855 under section 552.108(a)(1) of the Government Code and the information related to report numbers 13-35034 and 15-28878 under section 552.108(a)(2) of the Government Code.⁴

We understand you to raise section 552.101 of the Government Code in conjunction with section 411.083 of the Government Code for the basic information in report number 15-27855. Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center, which is confidential under federal and state law. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 at 7 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter E-1 or subchapter F of the Government Code. *See* Gov't Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter E-1 or subchapter F. Upon review, we find the sheriff's office has failed to demonstrate any of the basic information in report number 15-27855 contains CHRI for purposes of chapter 411. Accordingly, none of the basic information at issue is confidential under chapter 411, and the sheriff's office may not withhold any of this information under section 552.101 of the Government Code on that ground.

⁴As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

In summary, the sheriff's office must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is alleged to have committed the abuse in report number 15-28878, then the sheriff's office must withhold the information related to report number 15-28878 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the requestor is not alleged to have committed the abuse in report number 15-28878, then, with the exception of basic information, the sheriff's office may withhold the information related to report number 15-28878 under section 552.108(a)(2) of the Government Code. With the exception of basic information, the sheriff's office may withhold the information related to report number 15-27855 under section 552.108(a)(1) of the Government Code and the information related to report number 13-35034 under section 552.108(a)(2) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/bhf

Ref: ID# 590345

Enc. Submitted documents

c: Requestor
(w/o enclosures)